REMARKS

Independent Claims 1 and 17 are amended to recite that the collected data include false start events. New Claims 23 – 25 are added to recite a system which also collects line event data including false start events. Bases are found in the Specification (6:3-7; 8:21-30; 9:3-11; Figure 1:60). No new matter is added.

Claims 18, 20 and 21 are rejected under 35 USC 101 as drawn to non-statutory subject matter. Specifically, the Office Action in the parent application states the claims do not recite limitations which define a tangible result.

Applicants respectfully note each of these claims depend from independent Claim 17. Independent Claim 17 recites the tangible result of determining whether a second system will encounter a false start event based upon collected data. Claim 17 is statutory and not rejected under 35 USC 101.

Claims 18-21 incorporate all of the limitations of Claim 17 through dependency. 35 USC 112, 4th paragraph. Since Claims 18, 20 and 21, depend from Claim 17, they inherit the tangible result of Claim 17 and are, therefore, likewise statutory. The Examiner is respectfully requested to reconsider and withdraw this rejection.

Even, *assuming arguendo*, if the limitations of independent Claim 17 did not carry through to the dependent claims, the Court of Appeals for the Federal Circuit and USPTO have specifically decided this matter. Specifically, the Commissioner has taken the position that a computer program embodied in a tangible medium is patentable and statutory subject matter under 35 USC 101. The Commissioner's position was upheld by the Court of Appeals for the Federal Circuit. *In re Beauregard*, 53 F3d 1583, 35 USPQ 2d 1383 (Fed. Cir. 1995)

The Office Action cites the general proposition of *In re Warmerdam*, 33 F3d 1354, 31 USPQ 2d 1754 (Fed. Cir. 1994). But this case is not directly on point as it relates to the abstract idea of a data structure. The claims in question do not recite a data structure and are, therefore, not controlled by *Warmerdam*. Instead, Claims 18,

20 and 21 are directly controlled by *Beauregard*. Again, on the basis of the controlling case law, as well as 35 USC 112, 4th paragraph, the Examiner is respectfully requested to reconsider and withdraw all rejections based on 35 USC 101.

Claims 1-22 are rejected under 35 USC 103 as unpatentable over "A Quick Overview of ReliSoft's BlockSim," Product Description, in view of US Pat. 6,334,095 (Smith). The Examiner correctly notes that the ReliSoft product calculates uptime. However, the ReliSoft product does not calculate, cannot handle, and will not work with zero uptimes. Instead, ReliSoft treats a zero uptime as being one continuous downtime. Furthermore, the ReliSoft product does not collect data, as required by claims 1 - 22. Instead, ReliSoft only receives data which are separately input. Automatically collecting the data provides the benefit that a zero uptime event can be considered.

A zero uptime event is significant because when the system attempts to start up, but fails to reach full production (i.e., has no running time and zero uptime), the system will shut down. Shutdown of the system may be due to a particular module or component. However, each shutdown can affect adjacent and dependent modules and components. Any of these other components may fail during or due to the zero uptime event. Such failure then affects the total system reliability and availability.

However, if the system runtime is considered to be one extended downtime (as occurs with the Reliasoft product), the analyst cannot properly consider adjacent and dependent modules or components which may fail due to the false start event having zero uptime. Thus, an inaccurate analysis can occur.

It is only through the claimed process and system in which true false start events, including zero uptime false start events, are collected and used that accurate system analysis can be performed. The Examiner is respectfully requested to reconsider and withdraw all rejections under 35 USC 103.

The Information Disclosure Statement filed February 28, 2005 was not considered because it did not include an explanation of the relevance of non-English

language patents. No non-English language patents were included in this Information Disclosure Statement. However, Applicants respectfully submit that the two entries in that Information Disclosure Statement have the following relevance.

The relevance of the two notations is that the Assignee analyzed production systems which were used to make products which were sold into commerce. The cited analyses occurred more than one year prior to the filing of the instant application. The events may, therefore, be considered relevant prior art under 35 USC 102(b), although Applicants make no such admission in this regard. Applicants respectfully note that a companion application, Ser. No 09/565,008, filed May 4, 2000 and commonly assigned, was rejected under 35 USC 102(b) on that basis. However, Applicants respectfully submit, and argue, that rejection is improper and should be withdrawn.

Applicants have added a new item for the Examiner's consideration in the Supplemental Information Disclosure Statement filed herewith, although no admission is made nor intended hereunder this item represents prior art againt the instant application. Specifically, the Information Disclosure Statement cites JMP software which had the capability to calculate parameters that recognized false start events. However, Applicants respectfully note this software neither had the capability to to perform the simulation process of Claims 1 – 22, nor the capability to perform the data collection/recordation of Claims 23 – 25. One of ordinary skill using the JMP software would not know to use the software to collect manufacturing data (as required by Claims 23 – 25) or to use such data to analyze a second system for false start events (as required by Claims 1 – 22).

Applicants respectfully submit that is only through claimed simulation process and claimed manufacturing system that one of skill can reliably achieve results which indicate whether or not false start events, and particularly false start events having zero uptime, will occur. Accordingly, Applicants respectfully submit that the claimed invention is neither anticipated by, nor obvious in view of the JMP software.

The Examiner is respectfully requested to consider all items in the Information Disclosure Statement and make such consideration of record in the application, and to allow all claims remaining in the application.

Respectfully submitted,

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